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Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YSAEL ESPINOSA,

Docket No. 18-CV-8855 (LGS)

Plaintiff,

ANSWER

-against-

ABRAHAM REFRIGERATION A/C CORP. d/b/a
ABRAHAM REFRIGERATION CORPORATION,
ABRAHAM REFRIGERATION CORP., d/b/a
ABRAHAM REFRIGERATION, and
ABRAHAM PEREZ,

Defendants.

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Defendants, ABRAHAM REFRIGERATION A/C CORP. d/b/a ABRAHAM
REFRIGERATION CORPORATION, ABRAHAM REFRIGERATION CORP., d/b/a
ABRAHAM REFRIGERATION, and ABRAHAM PEREZ, by their attorneys, The Law Firm of
Adam C. Weiss, PLLC, herby answers the Complaint in the above-captioned matter as follows:

NATURE OF THE ACTION

1. Deny the allegations contained in Paragraph "1" of the Complaint.
2. Paragraph "2" constitutes Plaintiff's statement of the basis for its case and further states a legal conclusion to which no response is required. To the extent that any response may be required, the allegations of Paragraph "2" are denied.

JURISDICTION

3. Paragraph “3” constitutes Plaintiff’s statement of the jurisdiction of this case and further states a legal conclusion to which no response is required. To the extent that any response may be required, the allegations of Paragraph “3” are denied.

VENUE

4. Paragraph “4” constitutes Plaintiff’s statement of the venue of this case and further states a legal conclusion to which no response is required. To the extent that any response may be required, the allegations of Paragraph “4” are denied, except Defendants admit that Abraham Refrigeration is located and operates out of the locations set forth therein.

PARTIES

5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph “5”, and the same are therefore denied.

6. Deny the allegations contained in Paragraph “6” of the Complaint.

7. Deny the allegations contained in Paragraph “7” of the Complaint.

8. Deny the allegations contained in Paragraph “8” of the Complaint.

9. Admit the allegations contained in Paragraph “9” of the Complaint.

10. Admit the allegations contained in Paragraph “10” of the Complaint.

11. Paragraph “11” states a legal conclusion to which no response is required. To the extent that any response may be required, the allegations of Paragraph “11” are denied.

12. Admit the allegations contained in Paragraph “12” of the Complaint.

13. Admit the allegations contained in Paragraph “13” of the Complaint.

14. Admit the allegations contained in Paragraph “14” of the Complaint.

15. Admit the allegations contained in Paragraph “15” of the Complaint.

16. Admit the allegations contained in Paragraph “16” of the Complaint.
17. Deny the allegations contained in Paragraph “17” of the Complaint.
18. Deny the allegations contained in Paragraph “18” of the Complaint.
19. Deny the allegations contained in Paragraph “19” of the Complaint.
20. Deny the allegations contained in Paragraph “20” of the Complaint.
21. Deny the allegations contained in Paragraph “21” of the Complaint.
22. Deny the allegations contained in Paragraph “22” of the Complaint.
23. Deny the allegations contained in Paragraph “23” of the Complaint.

FACTUAL ALLEGATIONS

24. Admit the allegations contained in Paragraph “24” of the Complaint.
25. Admit the allegations contained in Paragraph “25” of the Complaint.
26. Deny the allegations contained in Paragraph “26” of the Complaint.
27. Deny the allegations contained in Paragraph “27” of the Complaint.
28. Deny the allegations contained in Paragraph “28” of the Complaint.
29. Deny the allegations contained in Paragraph “29” of the Complaint.
30. Deny the allegations contained in Paragraph “30” of the Complaint.
31. Deny the allegations contained in Paragraph “31” of the Complaint.
32. Deny the allegations contained in Paragraph “32” of the Complaint.
33. Deny the allegations contained in Paragraph “33” of the Complaint.
34. Deny the allegations contained in Paragraph “34” of the Complaint.
35. Deny the allegations contained in Paragraph “35” of the Complaint.
36. Deny the allegations contained in Paragraph “36” of the Complaint.
37. Deny the allegations contained in Paragraph “37” of the Complaint.

- 38. Deny the allegations contained in Paragraph “38” of the Complaint.
- 39. Deny the allegations contained in Paragraph “39” of the Complaint.
- 40. Deny the allegations contained in Paragraph “40” of the Complaint.
- 41. Deny the allegations contained in Paragraph “41” of the Complaint.
- 42. Deny the allegations contained in Paragraph “42” of the Complaint.
- 43. Deny the allegations contained in Paragraph “43” of the Complaint.
- 44. Deny the allegations contained in Paragraph “44” of the Complaint.
- 45. Deny the allegations contained in Paragraph “45” of the Complaint.

FIRST CLAIM

46. Defendants repeats and reallege each and every response contained in Paragraphs “1” through “45” of this Answer with the same force and effect as if fully set forth at length herein.

47. Paragraph “47” states a legal conclusion to which no response is required. To the extent that any response may be required, the allegations of Paragraph “47” are denied.

48. Paragraph “48” states a legal conclusion to which no response is required. To the extent that any response may be required, the allegations of Paragraph “48” are denied.

49. Paragraph “49” states a legal conclusion to which no response is required. To the extent that any response may be required, the allegations of Paragraph “49” are denied.

- 50. Deny the allegations contained in Paragraph “50” of the Complaint.
- 51. Deny the allegations contained in Paragraph “51” of the Complaint.
- 52. Deny the allegations contained in Paragraph “52” of the Complaint.

SECOND CLAIM

53. Defendants repeats and reallege each and every response contained in Paragraphs “1” through “52” of this Answer with the same force and effect as if fully set forth at length herein.

54. Paragraph “54” states a legal conclusion to which no response is required. To the extent that any response may be required, the allegations of Paragraph “54” are denied.

55. Deny the allegations contained in Paragraph “55” of the Complaint.

56. Deny the allegations contained in Paragraph “56” of the Complaint.

57. Deny the allegations contained in Paragraph “57” of the Complaint.

THIRD CLAIM

58. Defendants repeats and reallege each and every response contained in Paragraphs “1” through “57” of this Answer with the same force and effect as if fully set forth at length herein.

59. Paragraph “59” states a legal conclusion to which no response is required. To the extent that any response may be required, the allegations of Paragraph “59” are denied.

60. Deny the allegations contained in Paragraph “60” of the Complaint.

61. Deny the allegations contained in Paragraph “61” of the Complaint.

62. Deny the allegations contained in Paragraph “62” of the Complaint.

FOURTH CLAIM

63. Defendants repeats and reallege each and every response contained in Paragraphs “1” through “62” of this Answer with the same force and effect as if fully set forth at length herein.

64. Paragraph “64” states a legal conclusion to which no response is required. To the extent that any response may be required, the allegations of Paragraph “64” are denied.

65. Deny the allegations contained in Paragraph “65” of the Complaint.

66. Deny the allegations contained in Paragraph “66” of the Complaint.

67. Deny the allegations contained in Paragraph “67” of the Complaint.

FIFTH CLAIM

68. Defendants repeats and reallege each and every response contained in Paragraphs “1” through “67” of this Answer with the same force and effect as if fully set forth at length herein.

69. Deny the allegations contained in Paragraph “69” of the Complaint.

70. Deny the allegations contained in Paragraph “70” of the Complaint.

71. Deny the allegations contained in Paragraph “71” of the Complaint.

SIXTH CLAIM

72. Defendants repeats and reallege each and every response contained in Paragraphs “1” through “71” of this Answer with the same force and effect as if fully set forth at length herein.

73. Deny the allegations contained in Paragraph “73” of the Complaint.

74. Deny the allegations contained in Paragraph “74” of the Complaint.

SEVENTH CLAIM

75. Defendants repeats and reallege each and every response contained in Paragraphs “1” through “74” of this Answer with the same force and effect as if fully set forth at length herein.

76. Deny the allegations contained in Paragraph “76” of the Complaint.

77. Deny the allegations contained in Paragraph “77” of the Complaint.

AFFIRMATIVE DEFENSES FOR EACH AND EVERY CAUSE OF ACTION

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

78. The complaint fails to set forth a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

79. Plaintiff’s claims against Defendants are barred because the Defendants were not Plaintiff’s employer as defined under law.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

80. This action is barred by the doctrine of payment.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

81. This action is barred by the doctrine of unclean hands.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

82. Plaintiff, in whole or in part, is exempt from the pay requirements of the laws cited in the complaint.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

83. Defendants are entitled to a set-off with respect to Plaintiff for monies paid for any hours that Plaintiff was not working.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

84. Plaintiff cannot recover liquidated damages under FLSA because, in accordance with 29 U.S.C. §260, Defendants, at all times, acted in good faith and believed that their conduct was not in violation of FLSA.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

85. To the extent that Plaintiff could establish that Defendants are liable under FLSA (and he cannot), Plaintiff's recovery must be limited because Defendants did not act willfully.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

86. Any act or omission on the part of Defendants was in good faith and they had reasonable grounds for believing that such acts or omissions were not in violation of and were in conformity with FLSA, New York Labor Law, written administrative regulations, orders, rulings, approvals or interpretations of the U.S. Department of Labor and, therefore, some or all of the claims in the complaint are barred.

AS AND FOR AN TENTH AFFIRMATIVE DEFENSE

87. Defendants are entitled to a set-off with respect to Plaintiff for monies paid for any hours that Plaintiff was not working.

AS AND FOR ELEVENTH AFFIRMATIVE DEFENSE

88. Defendants reserve the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information and investigation into the Plaintiff's claims. These additional defenses cannot be articulated at this time due to the Plaintiff's failure to properly describe its claims with sufficient particularity in the complaint.

WHEREFORE, Defendants demands judgment dismissing the Complaint, with prejudice, and awarding Defendants' attorneys' fees, costs and disbursements of this action, and such other and further relief as this Honorable Court deems just, equitable and proper.

Dated: Glen Cove, New York
November 5, 2018

THE LAW FIRM OF ADAM C. WEISS, PLLC

A handwritten signature in black ink, appearing to be 'ACW', written over a horizontal line.

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